IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32(2) (b)

Description of Case

Writ Petition No. 1140 of 2004

Lalit Mohan Upreti & 3 others
Versus
State and others

Date of decision: 28.10.2004

For the approval of:-

Hon'ble Mr. Justice J.C.S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting?

- Whether the reporters be allowed to see the judgment?

Dated 28.10.2004
LSR

HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 1140 (SS) of 2004
(Under Article 226 of Constitution of India)

1. Lalit Mohan Upreti
   S/O Shri Ishwari Dutt Upreti
   R/o Mohalla, Thara Dunga,
   P.O. Lohaghat,
   District- Champawat
2. Bhuwan Chnadra Arya
   S/O Shri Nand Lal Arya
   R/O 303, Tulsi Nagar (Hydel Gate), Kathgodam,
   District- Nainital.
3. Naresh Chandra Joshi
   S/o Shri Kedar Datt Joshi
   R/o Village and Post- Baralu,
   District- Pithoragarh
4. Satyapal Singh
   S/o Shri Devi Ram
   R/o Village- Jagatpura,
   Post- Rudrapur
   District – U.S. Nagar

.....Petitioners

Versus

1. State of Uttaranchal
2. The High Court of Uttaranchal
   Through its Registrar
3. The District Judge, Champawat
   District- Champawat

.....Respondents.

Hon' ble J.C.S. Rawat, J.

Heard Shri Lalit Sharma, Shri Rakesh Thapliyal learned counsel for the petitioners and the learned Standing Counsel for the State.

2. The petitioners have filed this petition under Article 226 of Constitution of India with the prayer to

issue a writ, order or direction in the nature or a certiorari quashing the impugned orders dated 7.4.2001 (Annexure 11, 12, 13 & 14) as well as the notice dated 7.4.2004 (Annexure- 10) passed by the learned District Judge, Champawat, whereby the District Judge has terminated the Services of the petitioners as Class III employees from District Court, Champawat.

3. Brief facts leading to this petition are that an advertisement was issued in daily newspaper 'Dainik Jagran' on 30.10.2003 by the learned District Judge' Champawat whereby the applications were invited for the selection on the class III and class IV posts in the District Court, Chapawat and a notice was published in respect of the schedule of the examination. In pursuance of the said publication a written examination was held on the scheduled dated and the petitioners were appointed against the vacancies available in class III. The appointment letters were issued on 26.3.2004 to the petitioners. Thereafter, a notice was published in the notice board on 7.4.2004 in respect of each of the petitioner whereby the services of each of the petitioner were terminated with immediate effect. The learned District Judge also issued the termination orders on 7.4.2004 to each of the petitioner.

4. The learned counsel for the petitioners contended that the order dated 7.4.2004 and the termination order issued by the District Judge in respect of each of the petitioner have been passed without giving any

notice or opportunity to the petitioners and further contended that the impugned orders have been passed in violation of the principle of natural justice and it was further submitted by the learned counsel that the appointments of the petitioners were made against the substantive vacancies and their services cannot be terminated without assigning any cause.

5. I have gone through the impugned order and the appointment letters. The appointment letters clearly contains that-

"vkidh ;g fu;qfDr dk;Hkkj xzg.k djus ds fnukad ls rhu eghus dh ifjoh{kkdky esa j[kh tkrh gSA vkidh mDr fu;qfDr iw.kZr;k vLFkk;h gS vkj fdlh Hkh le; fcuk ukfVl fn;s lekIr dh tk ldrh gSAThe petitioners were appointed purely on the temporary basis in the Judgeship. In case of appointment on temporary basis a servant, who is so appointed, does not acquire any substantive right to the post and through the post may be permanent and it is an implied term of such appointment that if may be terminated at any time and without any notice. Perusal of the impugned orders of termination reveal that the termination orders are simpliciter order to termination without casting any stigma on the petitioner. The petitioners joined service as a temporary government servant and continued to be temporary and according to the terms of the orders of appointments their services could be terminated at any time without any notice or assigning any reasons. The learned counsel for the petitioners further submitted that they were appointed on probation the substantive

vacancies though they were appointed on the temporary basis as such they has a right to hold the post and their services cannot be terminated without assigning any reasons. The submission of the petitioners is not tenebavle. It is also settled position of law that the appointment even against the permanent post in government service either on probation or on officiating basis or on temporary basis is, from the very nature of such employment it itself of a very transitory character, the implied terms of such employment under the law is that it is terminable at any time. In other words in the case of appointment even to a permanent post on probation or on officiating or temporary basis the servant so appointed does not acquire any substantive right to the post and consequently can not complain any more that private servant employed on probation or on officiating or temporary basis can do, if his service is terminated at any time. The learned counsel for the petitioners further contended that he has filed notice by which it is revealed that some enquiry was made by the High Court with regard to the recruitment. It was further contended that on the basis of the enquiry the termination seems to have been made. The learned counsel further contended that in issued and the notice is require to the petitioners. The learned Standing Counsel for the State refuted the contention. Apparently, there is no evidence on record that the petitioners were termination on the ground that their appointment were found to be against the ruled on the basis of the

enquiry. The termination orders also do not contain any such averment. The contention of the learned counsel is based on surmises and conjuncture. This notice does not lead that the appointments were made contrary to the rules. These services of the petitioners were terminated on 7.4.2004, whereas the notice pertains to 17.4.2004. Thus it is evident that the said notice does not help to the petitioners. The learned counsel for the petitioners also relied upon the decision in **Badudeo Tiwary Vs. Sido Kahnu University and others (1998) 8 Supreme Court Cases 194,** in which it has been held that if the appointments were made in contravention of Acts, statute, rule or regulations etc, necessary enquiry will have to be made to arrive at such a conclusion and the persons, whose appointment is under enquiry, will have to be issued a notice. In the instant case the termination orders do not contains any averment that their services are being terminated on the ground that their appointment had been found contrary to the provisions of the statutes or the rulings. As such the aforesaid ruling is not applicable in this case.

6. In view of the foregoing discussion, I do not find any merit in the petition and the same is liable to be dismissed. Therefore, the petition is dismissed in limine.

28.10.2004

P. Anjali

(J.C. S. Rawat, J.)